



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket Number USCG-2019-0822]

RIN 1625-AA01

Anchorage Grounds; Atlantic Ocean, Delaware

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend the anchorage regulations for the Delaware Bay and River, and adjacent waters, by establishing two new, offshore deep-water anchorages. The purpose of this proposed rule is to improve navigation safety by accommodating recent and anticipated future growth in vessel size and volume of vessel traffic entering the Delaware Bay and River, and to preserve areas traditionally used or needed for anchoring. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2019-0822 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Marine Science Technician First Class (MST1) Jennifer Padilla, Sector Delaware Bay, U.S. Coast Guard; telephone (215) 271-4889,

email Jennifer.L.Padilla@uscg.mil; or Mr. Matt Creelman, Fifth Coast Guard District (dpw), U.S. Coast Guard; telephone (757) 398–6230, email Matthew.K.Creelman2@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

ACPARS	Atlantic Coast Port Access Route Study
AIS	Automatic Identification System
BOEM	Bureau of Ocean Energy Management
CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NOI	Notice of Intent
NPRM	Notice of Proposed Rulemaking
OREA	Offshore Renewable Energy Area
PARS	Port Access Route Study
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

In 2011, the Coast Guard received requests to formally establish anchorages in the Atlantic Ocean offshore from the Delaware coast in response to the Atlantic Coast Port Access Route Study (ACPARS), a multiyear study that included public participation and identified the navigation routes customarily followed by ships engaged in commerce between international and domestic U.S. ports. The ACPARS is available at <https://navcen.uscg.gov/?pageName=PARSReports>. To preserve areas traditionally used for anchoring from offshore development, the Federal Pilots and the Mariners' Advisory Committee for the Bay and River Delaware requested formal anchorage grounds be established to the east and the west of the southeastern approach traffic separation scheme. While these requests were noted in the ACPARS, the Coast Guard took no action in the pursuing years, and the areas to the east and the west of the southeastern approach traffic separation scheme continued to be used as traditional and unregulated anchorage grounds.

On July 12, 2018, and August 21, 2018, the Coast Guard held meetings with maritime stakeholders and waterway users to discuss the impacts to vessel traffic and navigation safety on the Delaware Bay and River due to the expansion of the Panama Canal and the planned deepening of the Delaware River from 40 to 45 feet. Meeting attendees included the Pilots' Association for the Bay and River Delaware, the Mariners' Advisory Committee for the Bay and River Delaware, Interport Pilots Association, and port and terminal representatives. The attendees concluded the increased volume of vessel traffic and the size of vessels calling on the Delaware Bay and River, and planned and potential offshore development, heightened the need to formally establish three new anchorage grounds: two offshore in the Atlantic Ocean and an additional inshore anchorage located in the Delaware Bay near the Cape Henlopen breakwaters. The participants suggested the anchorages would preserve areas traditionally used for anchoring and provide for the ongoing and future growth of the marine transportation system on the Delaware Bay and River.

On November 29, 2019, the Coast Guard published a Notice of Inquiry (NOI) in the **Federal Register** (81 FR 25854) to formally seek feedback on whether the Coast Guard should consider a proposed rulemaking to establish the three new anchorages. Following the naming convention in 33 CFR 110.157, the anchorages were referred to as Anchorage B—Breakwater, Anchorage C—Cape Henlopen, and Anchorage D—Indian River. We received 42 comments in response to the NOI. Five comments were supportive; twenty eight were opposed to the proposed inshore anchorage, Anchorage B; and fourteen were opposed to the proposed offshore anchorages, Anchorages C and D.

On May 5, 2020, the Coast Guard published a Notice of Study; request for comments entitled "Port Access Route Study (PARS) for the Seacoast of New Jersey Including Offshore Approaches to the Delaware Bay, Delaware" in the **Federal Register** (85 FR 26695). The initial comment period closed on July 5, 2020. The Coast Guard

conducted two virtual public meetings on October 28, 2020, and November 4, 2020, and the initial comment period was re-opened through November 10, 2020. The study included an in-depth analysis of historical anchoring patterns in the approaches to the Delaware Bay and River. Anchorage related comments received during the study are discussed in Section III, and a full list of comments can be found in the Port Access Route Study “PARS,” docket number USCG-2020-0172.¹

Based on feedback received to date, primary objections to the proposed inshore anchorage are environmental in nature and concern potential impacts on Atlantic Sturgeon, an endangered species under the Endangered Species Act. Primary objections to the proposed offshore anchorages concern potential conflicts between the siting of the anchorage grounds and the need to route electricity transmission export cables to the proposed or future offshore wind developments. Based on the differences and nature of concerns between the anchorages located inshore, in the Delaware River estuary, and the anchorages located offshore in the Atlantic Ocean, the Coast Guard intends to move forward with two separate rulemakings, one for the inshore anchorage, and another for the offshore anchorages. With this rulemaking, the Coast Guard proposes the establishment of the anchorages located offshore in the Atlantic Ocean, Anchorage C—Cape Henlopen, and Anchorage D—Indian River.

The purpose of this proposed rule is to improve navigation safety by accommodating recent and anticipated future growth in cargo vessel size and volume of vessel traffic entering the Delaware Bay and River, and to preserve areas traditionally used or needed for anchoring. We invite your comments on this proposed rulemaking.

The legal basis and authorities for this notice of proposed rulemaking are found in 46 U.S.C.70006, 33 CFR 1.05-1, DHS Delegation No. 0170.1, which collectively authorize the Coast Guard to propose, establish, and define regulatory anchorage

¹ The docket folder for USCG-2020-0172 is available at: [Regulations.gov](https://www.regulations.gov).

grounds.

III. Discussion of Comments on NOI

This section provides a detailed discussion of the public comments on the proposed Delaware Bay Anchorages received during the NOI comment period and during the two virtual public meetings held for the New Jersey PARS study. Also contributing to this rulemaking through the PARS study process, the Coast Guard Navigation Center collected and analyzed vessel historical Automatic Information System (AIS) track line data from all vessels between 2017 and 2019 and created AIS “heat maps.” These heat maps show a concentration of vessels and their voyage routes and give insight into their operations and use of the waterways and, most pertinent to this NPRM, the location of vessels when at anchor. A copy of this AIS Anchorage report can be found in the docket.²

On the NOI, the Coast Guard received a total of 19 comments concerning proposed Anchorage C – Cape Henlopen and Anchorage D –Indian River, five supportive and 14 opposed. Comments submitted to the online docket aligned into four categories: environmental concerns, electricity transmission export cable routing safety and security, view shed concerns, and supporters. Copies of the public comments received are available for viewing in the public docket for this rulemaking under docket number USCG-2019-0822. Commenters represented a wide range of individuals and entities, including State and local government officials, port authorities, representatives of affected industries, such as maritime, port, and other facilities, and private citizens. The comments received from these parties helped to inform the proposal in this NPRM.

1. Environmental Concerns

We received eight comments opposing the anchorage locations due to concerns that the presence of anchored ships could disrupt or pollute marine life habitats and behaviors. The Coast Guard has prepared a preliminary Record of Environmental

² The docket folder for USCG-2019-0822 is available at: [Regulations.gov](https://www.regulations.gov).

Consideration (REC) for this NPRM, which is available in the NPRMs docket folder, and has made a preliminary determination that the proposed anchorages do not cumulatively or individually have significant effect on the natural or human environment.

We also note there are existing laws and regulations in place to govern behavior of mariners and vessels related to concerns about the release of pollutants.

In terms of the discharge of pollutants, our regulations in 33 CFR part 151 and the Act to Prevent Pollution from Ships implement provisions of the International Convention for Prevention of Pollution from Ships and subject violators to penalties.³ In addition, the Ports and Waterways Safety Act (PWSA) of 1972 (33 U.S.C. 1221, 1223, 1228, 1232 et seq.) and PWSA-implementing regulations help us ensure vessel compliance with all applicable standards, operating requirements, conditions for entry into port, and enforcement provisions.

The Coast Guard also notes that this rulemaking will not significantly change the current and historical anchoring habits of vessels in these areas. This is demonstrated in the AIS heat maps for anchored vessels showing a concentration of vessels in or very near to the proposed anchorage areas. The formal regulation of these anchorages would not change the number of vessels that are anchoring and would provide greater oversight and predictability to vessel navigation in the area, which would ultimately lessen the potential for marine accidents and environmental impacts.

2. Electricity Transmission Export Cable Routing and Safety Concerns

There were three comments submitted that pertained to concerns regarding the new anchorages coexisting with potential undersea cable routes to adjacent wind farm leases. Commenters requested mitigating measures and further discussion with wind farm stakeholders to avoid anchors striking or fouling undersea cables. Conversations between the Coast Guard and offshore wind developers have continued, both during and

³ 33 U.S.C. 1901 et seq.

subsequent to the NOI and New Jersey PARS comment periods and virtual meetings. These conversations, among other things, have resulted in the developers choosing to pursue alternate cable routing measures that will avoid the proposed anchorage grounds.

3. Tourism Concerns and View Shed Concerns

Four comments submitted were opposed to the new anchorages stating that anchored vessels would obscure the ocean views from the coast and reduce the tourism appeal of the local areas and harm the local economies. In considering these comments, we note that the approval of the proposed anchorages will not directly change the status quo for vessels anchoring in these areas. AIS tracking data from 2017 to 2019 show vessels consistently anchoring in the same general area as the proposed areas, and that anchoring would continue in these areas regardless of the outcome of this rulemaking. By officially designating these anchorages, the Coast Guard can formally regulate the vessels that anchor in these offshore areas and limit vessels from anchoring elsewhere in the future, further affecting the human environment and local traffic.

4. Anchorage Proponents

There were five comments that stated the anchorages were necessary to preserve areas traditionally used for anchoring from offshore wind development and to provide adequate safe anchorage for vessels calling on the growing ports of the Delaware Bay and River. These comments were supported by AIS vessel data collected by the Coast Guard showing consistent anchorage in the proposed areas between 2017- 2019.

5. Comments Received During the PARS Meetings and Anchoring Data

Of the comments received during the New Jersey PARS virtual public meetings, six pertained to the proposed anchorages. One commenter specifically requested that this NPRM be available for at least 60 days for public comment. The remaining comments supported the anchorage proposal but stated concern for conflicts between vessel anchors and electricity transmission export cables. Conversations between the Coast Guard and

offshore wind developers have continued, both during and subsequent to the NOI and New Jersey PARS comment periods and virtual meetings. These conversations, among other things, have resulted in the developers choosing to pursue alternate cable routing measures that will avoid the proposed anchorage grounds.

IV. Discussion of Proposed Rule

The Coast Guard is proposing to establish new anchorage grounds Anchorage C -- Cape Henlopen and Anchorage D -- Indian River. This proposal reflects our consideration of comments received at public meetings and in the docket, the preliminary Record of Environmental Consideration, and data analysis collected during the New Jersey PARS study.

We believe this proposal will establish new deep-water anchorage grounds for commercial vessels that will support the new and projected growth in maritime commerce vessel traffic throughout the Delaware Bay and River. These anchorages will create predictable navigation patterns greatly improving safety of navigation at sea and limit the impact of anchoring to the sea floor to specific determined areas.

Anchorage C -- Cape Henlopen would be located in the Atlantic Ocean approximately 9.4 miles east of the Delaware coast. The proposed Anchorage C would be located in naturally deep water with charted depths between 41 and 85 feet. The boundaries of Anchorage C -- Cape Henlopen are presented in § 110.157(a)(19) of the proposed regulatory text at the end of this document.

Anchorage D -- Indian River would be located in the Atlantic Ocean beginning approximately 6 miles east of the Delaware coast. The proposed Anchorage D -- Indian River will be located in naturally deep water with charted depths between 40 and 85 feet. The proposed location of Anchorage D has historically been used as an unregulated anchorage by vessels entering and exiting the port. The boundaries of Anchorage D -- Indian River are presented in § 110.157(a)(20) of the proposed regulatory text at the end

of this document.

V. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the location and size of the proposed anchorage grounds, as well as the vessel traffic and anchoring data provided by the Coast Guard Navigation Center. The regulation would ensure approximately 27 square miles of anchorage grounds are designated to provide necessary commercial deep draft anchorages and enhance the navigational safety of commercial vessels transiting to, from, and within the Delaware Bay and River. The impacts on routine navigation are expected to be minimal because the proposed anchorage areas are located outside of the established traffic separation zones and are consistent with current anchorage habits. When not occupied, vessels would be able to maneuver in, around, and through the anchorages.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

The number of small entities impacted and the extent of the impact, if any, is expected to be minimal. Proposed Anchorage C- Cape Henlopen and Anchorage D – Indian River are located in an area of the Atlantic Ocean which is not a popular or productive fishing location. Further, the location is not in an area routinely transited by vessels heading to, or returning from, known fishing grounds. Finally, the anchorage is located in an area that is not currently used by small entities, including small vessels, for anchoring due to the depth of water naturally present in the area.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for Federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental Federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for Federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard

in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves amending the regulations for Delaware Bay and River anchorage grounds by establishing two new anchorage regulations; Anchorage C –Cape Henlopen and Anchorage D – Indian River. Normally such actions are categorically excluded from further review under paragraph L59(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

VI. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG-2019-0822 in the search box and click

"Search." Next, look for this document in the **Search Results** column, and click on it. Then click on the **Comment** option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2071; 46 U.S.C. 70034; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Amend § 110.157 by adding paragraphs (a)(18) through (20) to read as

follows:

§ 110.157 Delaware Bay and River.

(a) * * *

(18) *Reserved.*

(19) ***Anchorage C – Cape Henlopen.*** The waters bounded by a line connecting the following points:

Latitude	Longitude
38°40'54.00"N	74°52'00.00"W
38°40'56.08"N	74°48'51.34"W
38°37'36.00"N	74°48'30.00"W

(DATUM: NAD 83)

(20) ***Anchorage D – Indian River.*** The waters bounded by a line connecting the following points:

Latitude	Longitude
38°34'56.25"N	74°52'19.12"W
38°33'40.91"N	74°54'41.50"W
38°31'31.08"N	74°55'27.96"W
38°29'07.35"N	74°53'29.25"W
38°28'56.87"N	74°50'28.69"W
38°30'07.37"N	74°48'08.38"W

(DATUM: NAD 83)

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Dated: March 14, 2022.

L. M. DICKEY,
Rear Admiral, U.S. Coast Guard,
Commander, Fifth Coast Guard District.

